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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949

No. 339

IN THE MATTER OF
CHICAGO RAILWAYS COMPANY, et al.,
Debtors.

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

vs.

JOHN E. SULLIVAN, Liquidating Trustee, etc., et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

JOHN S. BOYLE,
State's Attorney of Cook County, Illinois,
507 County Bldg., Chicago 2, Illinois,
Attorney for Petitioner.

GORDON B. NASH,
MELVIN F. WINGERSKY,
MEYER H. GOLDSTEIN,
Assistant State's Attorneys,
Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO

INDEX.

PAGE

Petition for writ of Certiorari 1
Summary statement of matter involved 2-5
Jurisdictional statement 6
Question presented 6-7
Reasons relied on for allowance of writ 8
Prayer for writ 9-10
Brief in support of petition for writ of Certiorari.... 11
Opinions of courts below 11
Jurisdiction 12
Statement of case 12
Specification of errors 12-13
Argument 14-22
Summary of Argument 14
I. The bankruptcy court, in proceedings for consolidated reorganization is without power to redetermine those valuations underlying assessments, made by a local collector during such proceedings, upon which debtors pay taxes.
Debtors payment of taxes based upon assessments made by local Assessor overcomes the defense of lack of statutory notice of those assessments upon which taxes are paid and, in any event, notice is not required in connection with horizontal adjustments arising through equalization 14-20
II. Taxpayers did not seek, pursue nor exhaust statutory or administrative remedies hence the District Court should not have redetermined the assessed valuations.
Respondents did not report their personal property in Assessor's tax returns on the valuation measured by the "Upset Price" provided for in the Plan of Reorganization and cannot, therefore, urge such valuations in a hearing upon a tax claim for the balance of unpaid taxes, especially where a portion of the taxes, based on the local Assessor's valuation, was paid by them 20-22

TABLE OF AUTHORITIES.

Cases.

Arkansas Corporation Commission v. Thompson, 313 U. S. 132, 61 S. Ct. 888, 85 L. Ed. 1244 ..... 14, 15, 17

Bi-Metallic Investment Co. v. State Board of Equalization of Colorado, 239 U. S. 441, 36 S. Ct. 141, 60 L. Ed. 372 21

Gorham Mfg. Co. v. Tax Commission, 266 U. S. 265, 45 S. Ct. 80, 69 L. Ed. 279 20

Gardner v. New Jersey, 329 U. S. 565, 67 S. Ct. 467, 91 L. Ed. 504 16

In Re Chicago Railways, 160 F. 2d 59, Cert. Den. 331 U. S. 808 14

People v. Union Electric Power Co., 392 Ill. 271, 64 N. E. 2d 534 19

People Ex Rel. Isbell v. Albert, 403 Ill. 469, ... N. E. 2d 20

Statutes.

Illinois Constitution, Sec. 1, Article IX 19

28 U. S. C. A. Sec. 347 6

28 U. S. C. Sec. 1254 12

Sec. 509, Illinois Revenue Act of 1939 (Ill. Rev. Stat., c. 120, § 28) 21

Sec. 593, Illinois Revenue Act of 1939 (Ill. Rev. Stat., c. 120, § 112) 16

Sec. 627, Illinois Revenue Act of 1939 (Ill. Rev. Stat., c. 120, § 146) 19

Sec. 795, Illinois Revenue Act of 1939 (Ill. Rev. Stat., c. 120, § 314) 22

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The People of the State of Illinois, petitioner herein, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit rendered on June 16, 1949 (R. 193) affirming the judgment of the United States District Court for the

Northern District of Illinois, Eastern Division (R. 132) denying claim for, and permanently enjoining collection of, certain taxes assessed against tangible personal property of the Debtors for the year 1946, and in support of this petition show:

Summary Statement of the Matter Involved.

The petitioner, People of the State of Illinois, filed a claim (R. 6) for a balance of unpaid taxes against these several respondents pursuant to an order (R. 3), fixing the time for filing such claims, duly entered during consolidated (R. 2-3) proceedings for reorganization in the United States District Court.

Respondents are the several corporations (R. 6—Chicago City Railway Company, the Southern Street Railway Company, Chicago & Western Railways Company, Calumet & South Chicago Railway Company and Chicago Railways Company, hereinafter referred to as "respondents" and "debtors", constituting the Chicago Surface Lines which operated a transportation system in Chicago, Illinois, and formerly owned the tangible personal property on which the taxes, here involved, were assessed and levied for the year 1946.

Petitioners alleged that; taxes amounting to $2,583,056.47 had been assessed against said personal property for the year 1946 (R. 7); Respondents paid $1,632,727.29 (R. 8) of this tax on account; the claim filed was for $950,329.18 being the unpaid balance of said taxes (R. 8) plus penaltiess of $76,026.33 as of the date of filing the claim; the County Clerk of Cook County had delivered to the County Collector warrants authorizing and directing collection of said taxes; the unpaid balance and interest were a prior and first lien upon the property of respondents.

Trustees for the various respondents answered and objected to this tax claim (R. 9 *et seq.*) admitting that "these Debtors have paid the sum of $1,632,727.29 on account of said taxes" (R. 9) but denied there was a balance due either by way of taxes or penalties (R. 9). This answer, filed in the District Court, was divided into two parts, *viz:* "Section A. Concerning the Original Assessment Totalling $58,619,631.00" (R. 12-19) and "Section B. Concerning the Equalization of the Original Assessments which added a total of $34,585,583 thereto" (R. 19-21).

Various objections were made therein by the Trustee asserting, among other things, that the assessments were so grossly excessive, arbitrary and unfair as to deprive the respective respondents of equal protection under law as guaranteed by the Federal Constitution; that the respondents were deprived of property without due process of law; that the Assessor failed to mail to the Trustees of respondents and they or their Trustees, failed to receive a publication in pamphlet form of the assessments of their personal property under Section 104 of the Revenue Act of 1939 (Ill. Rev. Stat., c. 120, § 585); that the application of the multiplying factor of 1.5900 by the County Clerk to respondents' original assessment as made by the Assessor, resulted in an illegal total equalized assessment.

Various witnesses testified at the hearing on this tax claim in the District Court (R. 25 *et seq.*). The witness Busch, called by the Trustee (R. 25) and through whose testimony respondents attempted to prove they received no notice of the assessment, testified that he was employed (at the time of testifying) by the Chicago Transit Authority (R. 25) and that he was employed by the Chicago Surface Lines prior to the acquisition of the property by the Transit Authority in the capacity of Superintendent

Engineer of Buildings and Construction (R. 25). This witness testified (R. 30) that he did not receive any printed notice of the final figures of the "Assessor" with respect to valuation (R. 30).

The Deputy Assessor of Cook County was called as a witness (R. 32) by the trial court and, among other things, including various phases and details of the base or original assessment, testified on examination by counsel for the trustee, that he could not answer the question put to him concerning sending out printed statutory publication notices (R. 40). This witness did say however "as a matter of fact, Mr. Busch received a copy—" (R. 40).

The trustee called the Supervisor of the Property Tax Division of the Department of Revenue of the State of Illinois, who testified concerning the determination of assessment ratios and equalization factors on a county-wide basis (R. 50); that the Butler Bills called for raising all valuations by equalization, on a county-wide basis, to 100 per cent (R. 51). The Chief Clerk of the Board of Appeals of Cook County, Illinois, on behalf of the trustee, testified (R. 56-58), among other things, that September 9, 1946, was the last day when the Board had any hearings with respect to the 1946 personal property tax assessment (R. 58).

The bankruptcy court entered an order (R. 132-150) denying the claim and permanently enjoining the collection of the 1946 taxes, finding among other matters, as follows:

> "2. That the debtors herein have heretofore duly paid to the County Collector of Cook County the sum of $1,610,727.29 for tangible personal property taxes assessed and levied for the year 1946 *(based upon a total assessed valuation of $58,619,631 as made by the local assessor of Cook County)*:" (R. 140) (Italics ours).

Despite this express finding the entire assessed valuation made by the local Assessor was examined and determined, by the bankruptcy court, holding that said payment was all and more than was legally due and owing by the debtors (R. 140). The court also held that there was evidence that the original assessed valuations made by the said local Assessor were in excess of the true fair cash valuation of the tangible personal property (R. 141)—the bankruptcy court used the "upset sales price of $75,000,000* as the measurement of value on the assessment date of April 1, 1946 (R. 141) in reassessing debtors' property."

Subsequent to the foregoing order and upon the court's own motion, additional and supplemental findings of fact and conclusions of law on this tax claim were entered by the bankruptcy court (R. 150-152). This order was focused entirely upon the assessment as equalized and the manner of determining the multiplier or reciprocal factor of 1.5900 by the Illinois State Department of Revenue.

Neither of the orders entered by the bankruptcy court contained findings concerning notice of the particular assessment made by the local Asesssor of Cook County.

Petitioners moved (R. 154) to strike and vacate the additional and supplemental findings of fact and conclusions of law which motion was overruled and denied (R. 165). Appeals (R. 156 and 174) to the United States Court of Appeals were taken by petitioners from the order denying the claim and overruling the motion to strike. These several appeals were consolidated (R. 185) in the Court of Appeals for the Seventh Circuit.

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* (See: Trustee's Exhibit 4—Reorganization Plan of Chicago Surface Lines.)

Jurisdictional Statement.

The jurisdiction of this Court is invoked under Section 1254 of the New Title 28, Judiciary and Judicial Procedure, effective September 1, 1948, C. 81 (Title 28 U. S. C., section 1254) and under General Rule 38 of this Court, section 5, subdivision b.

Questions Presented.

1. Where debtors, in the course of their consolidated proceedings for reorganization, pay personal property taxes, assessed and levied (during such proceedings) upon a total assessed valuation as made by a local assessor, can the bankruptcy court redetermine that particular portion of the underlying assessment on a claim for the unpaid balance of such taxes?

2. Where debtors, in the course of consolidated proceedings for their reorganization, pay personal property taxes based upon total assessed valuation as made by a local assessor, do they have a valid objection to a claim for the unpaid balance of such taxes on the ground they did not receive statutory notice of the:

(a) local Assessor's valuation?
(b) local Assessor's assessment as equalized?
(c) equalized assessment?

3. Does a bankruptcy court examining a claim for the balance of unpaid personal property taxes, have power to redetermine valuations underlying assessments made by a local Assessor upon which assessment debtors in bankruptcy paid taxes?

4. In examining a claim for the unpaid balance of personal property taxes, does the bankruptcy court have power to redetermine valuations underlying assessments made by a local assessor and upon which particular assessments a trustee in bankruptcy has paid taxes?

5. Where debtors in consolidated proceedings under Chapter X of the Bankruptcy Act have duly paid to the County Collector a sum of money for tangible personal property taxes assessed and levied during such proceedings, for the year 1946, based upon a total assessed valuation as made by the local Assessor, can the bankruptcy court redetermine valuations underlying the assessments of such Assessor when examining a claim for the unpaid balance of personal property taxes of the same year?

6. Can a trustee in bankruptcy have a redetermination by a court of bankruptcy of valuations underlying assessments after having paid a portion of personal property taxes, levied during reorganization proceedings, by resisting the claim for the balance due on such taxes in objecting to the assessments?

7. What is the extent of the authority and power of the bankruptcy court when hearing a claim for the unpaid balance of personal property taxes assessed and levied during proceedings for corporate reorganization, to determine questions as to the amount of legality of tangible personal property taxes upon which a trustee in bankruptcy has made a part payment?

Reasons Relied Upon for Allowance of the Writ of Certiorari.

1. The decision of said Court of Appeals as to the power of the reorganization court to redetermine valuations underlying assessments made by the local assessor, is a decision of a federal question in a way probably in conflict with applicable decisions of this Court.

2. The decision of the aforesaid Court of Appeals as to the power of the District Court to redetermine and revise assessments made by the local assessor as equalized by state authorities is a decision of a federal question in a way probably in conflict with applicable decisions of this Court.

3. The decision of said Court of Appeals as to the notice concerning the alleged increase in the returned valuations by the assessor, by holding that no statutory notice was given or received and therefore the bankruptcy court had powers in equity to grant relief in spite of payment of a portion of the taxes involved by its trustee in bankruptcy, has decided an important question of federal law which has not been, but should be settled by this Court.

4. The decision of the Court of Appeals as to the power of the District Court, hearing a claim for the unpaid balance of taxes, to redetermine and revise personal property assessments made by a local Assessor and upon which the bankruptcy court's debtors paid taxes, is a decision of a federal question in a way probably in conflict with applicable decisions of this Court.

5. The decision of the Court of Appeals as to the excuse of debtors from not having resorted to administrative remedies even though taxes were paid upon the assessment made by local assessor and in spite of the fact the Trustee did not file tax returns on the same valuations contended for by him in the District Court, is a decision of a federal question in a way probably in conflict with applicable decisions of this Court.

6. Can a bankruptcy court revise personal property tax assessments made by a local assessor to valuations below those which debtors report in their tax returns to said assessor?

7. Is debtors failure to exhaust administrative remedies excused by an alleged lack of statutory notice of assessment upon which taxes are subsequently paid, and where debtors contend for property valuations below even those reported by them in personal property tax returns?

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United States Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case numbered and entitled on its docket, Nos. 9699, 9732, In the matter of Chicago Railways Company, *et al.*, Debtors; People of the State of Illinois, Appellants, *vs.* John E. Sullivan, Liquidating Trustee, etc., *et al.*, Appellees, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Court be re-

versed by this Court, and for such further relief as to this Court may seem proper.

PEOPLE OF THE STATE OF ILLINOIS,
By JOHN S. BOYLE, *State's Attorney of Cook County, Illinois,*
Attorney for Petitioner.

By .....
Assistant State's Attorney.

.....
Assistant State's Attorney.

GORDON B. NASH,
MELVIN F. WINGERSKY,
MEYER H. GOLDSTEIN,
Assistant State's Attorneys,
Of Counsel.

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Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of the Court Below.

The order denying the tax claim together with additional findings of fact and conclusions of law made and entered by the District Court are reported in 79 F. Supp. 989 and are reprinted on pages 132-152 of this record. The opinion, rendered June 16, 1949, by the Court of Appeals appears at pages 193-205 of the record and is reported in 175 F. 2d 282.

Jurisdiction.

The jurisdiction of this court is invoked under Section 1254 of the New Title 28, Judiciary and Judicial Procedure, C. 81, effective September 1, 1948 (Title 28, U. S. C., Sec. 1254) and under General Rule 38 of this Court. The judgment of the Court of Appeals was entered June 16, 1949, and its mandate stayed (R. 212) and withheld until September 16, 1949.

Statement of the Case.

The summary of facts set forth in the preceding petition is adopted and made a part of this brief.

Specification of Errors.

Petitioner contends that the Court of Appeals erred:

1. In failing to hold that payment by the debtors of taxes based upon the total assessed valuation as made by the local Assessor precluded a defense predicated upon want of statutory notice of that particular assessment.

2. In holding that respondents were wrongfully deprived of their opportunity to seek administrative relief due to an alleged failure to receive a statutory notice of the assessment upon which they paid taxes.

3. In holding that the District Court had power to grant relief from the unpaid balance of taxes by revising and redetermining valuations underlying the base assessments upon which debtors paid taxes.

4. By holding, in substance, that the technical defense of want of statutory notice of an assessment upon which taxes were paid overthrows the rule of law that taxpayers

must exhaust administrative remedies before seeking relief in the courts.

5. In not holding that payment of personal property taxes waives the defense of lack of notice of the assessment upon which such taxes are based.

6. In failing to hold that the basic requirement of exhaustion of administrative remedies by a trustee in reorganization proceedings before resorting to judicial relief is not canceled by absence of a statutory notice of the assessment upon which taxes are paid by debtors during such proceedings.

7. In holding, in substance, that the District Court could review and then revise the assessments made of the debtors' property to valuations below that which debtors scheduled in their several tax returns.

8. In holding, in substance, that the District Court could review, revise and redetermine the assessments made by the local Assessor of the tangible personal property of the debtors.

9. In failing to hold that there was no error of calculation in determining the unpaid balance of tax claimed to be due by petitioner.

10. In failing to hold that the denial, by the District Court, of personal property tax claim filed in the proceedings for corporate reorganization constituted a reassessment of debtors' personal property by that Court.

11. In defining and construing the scope and extent of the bankruptcy court's power over this tax claim.

12. In holding that the District Court had power to redetermine valuations underlying the assessments made of debtors' personal property.

13. In not reversing the judgment of the District Court.

14. By affirming the District Court's judgment.

ARGUMENT.

(For summary of argument we respectfully refer the Court to the Index filed herewith.)

I.

The Bankruptcy Court in proceedings for reorganization is without power to redetermine the valuations underlying assessments made during such proceedings, and upon which assessments debtors paid taxes.

Prior to the filing of petitioner's tax claim, respondents had paid to the County Collector of Cook County, $1,610,-727.29 for 1946 personal property taxes based upon the total assessed valuation as made by the local Assessor of that County (R. 140). These taxes were assessed, levied and partially paid while respondents were in the course of reorganization proceedings. Trustee's Exhibit No. 4 (in separate cover and filed with this record) shows that the Reorganization Plan of the Chicago Surface Lines was approved by order of the District Court on February 27, 1946. Thereafter the Plan was reviewed by the Court of Appeals in its opinion dated January 4, 1947. (*In re Chicago Railways*, 160 F. 2d 59, *cert. den.* April 14, 1947, 331 U. S. 808).

Personal property tax returns (Trustee's Exhibits 1, 2 and 3; Record pp. 79 to 111) were filed in the name of the various respondents and signed by their various officers, not by or in the name of the Trustee.

In the case of *Arkansas Corporation Commission* v. *Thompson* (1941), 313 U. S. 132, 61 S. Ct. 888, 85 L. Ed. 1244, the trustee in bankruptcy failed to avail himself of his right of appeal to the state courts. And here the record (at

page 48) discloses (in the course of the examination of the Deputy Assessor of Cook County by the assistant state's attorney) the following course of action by respondents:

> "Q. Now, the Surface Line's three Companies did pay a tax upon the Assessor's figures of $58,619,631. That's correct, isn't it?
>
> A. You say they paid a tax?
>
> Q. On the Assessor's valuation?
>
> A. I wouldn't know.
>
> Mr. Healy*: I will agree that they did. Even though we disputed the items, *we paid the tax.*" (Italics supplied.)

Despite the payment of that particular portion of the taxes, the District Court redetermined (R. 141) the assessed valuation ascertained by the local Assessor. We contend that such judicial action runs counter to the restriction upon the power of a court of bankruptcy implicit in the opinion of *Arkansas Corporation Commission* v. *Thompson*, 313 U. S. 132, 138, 139, wherein this Court said:

> "This case raises questions concerning the right and power of a federal bankruptcy court to revise and redetermine for state tax purposes the property value of a railroad (Missouri Pacific) in reorganization under Section 77 of the Bankruptcy Act, 11 U. S. C. A. Section 205, the state (Arkansas) having already determined such value through its own taxing officials and in accordance with the procedure prescribed by valid state legislation.
>
> * * * For we are of the opinion that the Congressional language giving to the bankruptcy court power to determine the 'amount of legality' of taxes does not mean that the court is given *power* to redetermine and revise the property value finally fixed by a state under the circumstances revealed by the trustee's petition, even though that value is the basis used in computing the amount of taxes legally due and owing." (Emphasis ours.)

---

*Attorney for the Trustee (R. 21, 23).

It is evident that the "power" of a Bankruptcy Court was under scrutiny, not merely the principle of *res judicata*. *Gardner* v. *New Jersey* (1947), 329 U. S. 565, 578, 67 S. Ct. 467, 91 L. Ed. 504, confirms such interpretation in this manner:

> "Third. We held in *Arkansas Corporation Commission* v. *Thompson*, 313 U. S. 132, 85 L. Ed. 1244, 61 S. Ct. 888, 45 Am. Bankr. Rep. (N. S.) 462 *supra*, that the reorganization court *lacked the power* under Section 77 to redetermine for state tax purposes the property value of a railroad where that value had already been determined in state proceedings which afforded ample protection to the railroad's rights. We adhere to that decision. Its ruling precludes redetermination by the reorganization court in this case of the valuations underlying the aassessments made by the state authorities and the validity of those assessments used as the basis for the computation of the taxes. It may *not* therefore entertain the objections to New Jersey's claim which tender those issues. * * *" (Emphasis phasis ours.)

In the instant case the Trustee did not avail himself of the administrative remedy provided under Illinois statutes (Section 593, *et seq.*, Illinois Revenue Act of 1939, Ill. Rev. Stat., 1947, c. 120 § 112, *et seq.*) for review of local assessments by the Board of Appeals. The opinion of the Court of Appeals analyzes (R. 193, at 201-202) this failure to exhaust administrative remedies in the following manner:

> "The evidence discloses that the first notice that an increase in the returned valuations had been made by the Assessor in the spring of 1947 was in the form of debtors' personal tax bill received a year later, long after the Board of Appeals' jurisdiction and its power to review the Assessor's assessments of 1946 had expired. The trustee's representative, charged with responsibilities for debtor's personal property assessments, testified that he received no earlier notice of the increase, and the Deputy Assessor, who for a number of years had had charge of personal property as-

sessments, testified that he 'did not know' whether the statutory notice had been given. The State did not cross-examine either of these witnesses and offered no proof that the notice had been sent as required by law."

It is our contention that the record does not substantiate the foregoing portion of that opinion and therefore the doctrine laid down in the *Arkansas Corporation Commission* v. *Thompson*, 313 U. S. 132, case is applicable here.

Examination of this record discloses that the testimony (R. 30) concerning the printed notice of the Assessor's assessment is as follows:

> "Q. Now, Mr. Busch, did *you* receive any printed notice or printed publication of the final figures of the Assessor with respect to the valuation, the assessed valuation, of your personal property tax returns for 1946?
>
> A. No, sir.
>
> Q. Do you know whether or not these figures, as returned by the Assessor; did you find that out?
>
> A. Only by our attorney telling me * * *" (Emphasis supplied)

Trustee's witness, Busch, testified that he had been employed by the Chicago Surface Lines prior to the acquisition of the property by the Transit Authority in the capacity of Superintendent Engineer of Buildings and Construction (R. 25). This witness also testified that the personal property tax returns filed with the Assessor of Cook County for 1946 were compiled under his direction (R. 25) but we find that the several personal property tax returns (Trustee's Exhibits numbered 1, 2 and 3; R. 79, 89 and 103) are made out in the name of the respective debtors and are signed by various officers of the individual corporations. Nothing in these returns indicates that Mr. Busch was the one to be notified concerning the assessment. This is the sole evidence with reference to the notice of "increase in the returned valuations" mentioned in the opinion of the

Court of Appeals, with exception of testimony adduced from the Deputy Assessor of Cook County, called as witness by the Court, and who under examination by counsel for the Trustee, testified as follows:

"Q. Now, did you send any printed publication, as required by the statute, to these taxpayers, of their increased valuation? In 1946 did the Assessor.s office send those out currently, when they assessed property?
A. I couldn't answer that.
Q. As a matter of fact, you knew the practice isn't followed very religiously over there, to send them out currently?
A. *As a matter of fact, Mr. Busch received a copy*—
Q. Just answer this question; was the printed pamphlet notice sent out, as required by statute, to the taxpayers?
A. That, I don't know, I couldn't answer that question.
Q. You don't know.
A. No." (Italics supplied.)

The trustee introduced no other evidence concerning the notice of the assessment. The only other mention of notice was made by Trustee's counsel during the course of arguments (R. 65 *et seq.*).

There are two parts or phases of the valuations totaling $93,205,214 which are involved in this case. The first is the original assessment made by the local Assessor in the total amount of $58,619,631 and the second part, the resultant product of the multiplication of that particular assessment by a multiplying factor of 1.5900 applied by the County Clerk of Cook County, equalizing the base assessment (or local Assessor's valuation) in the sum of $34,585,583 and thereby producing a total assessed valuation as equalized by order of the Illinois State Department of Revenue in the foregoing amount of $93,205,214. The State Department of Revenue directed (Trustee's Exhibit

7, R. 119) the County Clerk (not the local Assessor) to apply the multiplier of 1.5900 to the listed or assessed valuation of *all* property in Cook County.

In *People* v. *Union Electric Power Co.*, 392 Ill. 271, 64 N.E. 2d 534 (1946) it was said: "There is some discussion in the briefs about the difference between equalization of taxes and assessment of taxes. Not only does the statute disclose, but we have held, that they are separate functions. * * *"

Section 1 of Article 9 of the Constitution of Illinois provides that the valuation of property for taxation shall be ascertained by some person or persons, to be elected or appointed in such manner as the General Assembly shall direct. The local Assessor of Cook County is that person. The authority of the State Department of Revenue to equalize assessments stems from Section 627 of the Revenue Act of 1939 (Ill. Rev. Stat., 1947, c. 120, § 146).

With reference to the question of notice of the particular assessments made by the Assessor of Cook County as against the figures submitted on respondent's tax returns, we point out that it is on that assessed valuation that the respondents had already paid to the County Collector of Cook County the personal property taxes. In other words, the trustee in bankruptcy, although claiming not to have received a notice of the assessment, proceeded to pay, during reorganization proceedings, taxes based upon a total assessed valuation made by the local Assessor of Cook County (R. 140) although he subsequently questioned the ascertainment of valuation made by the Assessor and in fact, devoted considerable testimony seeking to impeach the very assessment upon which the District Court found taxes were paid.

II.

These taxpayers neither sought, pursued nor exhausted statutory or administrative remedies therefore the bankruptcy court should not have redetermined the assessed valuations.

It is well established that "A taxpayer who does not exhaust the remedy provided before an administrative board to secure the correct assessment of a tax, cannot thereafter be heard by a judicial tribunal to assert its invalidity • • • (Cases collected) • • •" *Gorham Mfg. Co.* v. *Tax Commission*, 266 U. S. 265, 45 S. St. 80, 69 L. Ed. 279.

In this cause the trustee for the various corporate debtors did not exhaust the administrative remedy provided for by Illinois statutes. (Section 593, *et seq.*, Illinois Revenue Act of 1939, Ill. Rev. Stat. 1947, c. 120, § 112, *et seq.*)

The trustee interposes as a defense to this failure to pursue administrative remedies, want of assessment notice by the local assessor. But, objections of the Trustee urging that the Assessor without notice, increased the valuations, reported in respondents' tax returns as part of his assessing functions, is met with the answer of payment by debtors based on such valuations. The only other contention pertaining to notice would involve the equalization process which gave rise to the equalized assessment.

The Court of Appeals took this matter under advisement (R. 192) on May 18, 1949, after a hearing on the transcript of record, briefs and oral arguments. On May 19, 1949, the Supreme Court of Illinois handed down an opinion in the case of *People ex rel. Isbell* v. *Albert*, 403 Ill. 469, ... N.E. 2d. ..., (1949) pertinent to this cause. In that case the

defendant complained that the State Department of Revenue in raising the assessed valuations of property in Fayette County, pursuant to the equalization process contemplated by the Illinois Revenue Act, without notice to him and other taxpayers, violated the guarantee of due process of law. The Supreme Court affirmed the county court overruling objections of the defendant taxpayer. And the court there held, in substance, that where a horizontal raise is made by the State Department of Revenue, as a result of its equalization process, the notice required to be given to a taxpayer does *not* have to be personal notice. (*Bi-metallic Investment Co.* v. *State Board of Equalization of Colorado*, 239 U. S. 441, 36 S. Ct. 141, 60 L. Ed. 372.)

Trustee's Exhibit No. 5 (R. 113) is a printed information sheet and set of instructions for filling out personal property tax returns for public utility corporations. Among other things it contains this paragraph:

> "When Taxable. All property is taxable as of April 1, of each year. Its valuation for taxation purposes is its fair cash value on that day. If property which you owned on that date has been sold, destroyed or removed from the state, you are nevertheless liable to a tax upon it, and must list such property."

That is the command of Section 509 of the Illinois Revenue Act of 1939 (Ill. Rev. Stat. 1947, c. 120, § 28). In spite of the aforesaid tax instruction the Trustee did not submit a copy of the Plan of Reorganization (Trustee's Exhibit No. 4) with the personal property tax returns in support of debtors' valuation claims, and as "owner's valuation", though the Plan was approved by order of the District Court entered February 27, 1946. It is the "Upset Price" contained in this Plan which respondents assert is the indicia of value of their personal property for purposes of these taxes. However it was not until petitioner filed this

tax claim that the trustee contended for valuations based upon that judicial sale's price, even though debtors had not filed their tax returns on that basis. We do not concede that the "Upset Price" is a proper indicia of value for taxation purposes, but point out this matter to demonstrate that consistent with the tax payments made herein, the Trustee did not seek "Upset Price" valuation when reporting the personal property for tax purposes.

Section 795 of the Illinois Revenue Act of 1939 (Ill. Rev. Stat. 1946, c. 120, § 314) is a saving clause which provides among other things that:

> "• • • A failure to give any notice required by this Act shall not impair or affect the validity of any assessment as finally made."

Conclusion.

Predicated upon the foregoing matters, it is respectfully submitted that the writ of *certiorari* should be granted.

Respectfully submitted,

JOHN S. BOYLE,
State's Attorney of Cook County,
507 County Building, Chicago 2, Illinois
Attorney for Petitioner.

GORDON B. NASH,
MELVIN F. WINGERSKY,
MEYER H. GOLDSTEIN,
Assistant State's Attorneys,
Of Counsel.